

DEPARTMENT OF THE ARMY NATIONWIDE PERMIT NUMBER 23

Department of the Army Nationwide Permit (NWP) number 23 was issued pursuant to the January 15, 2002, Federal Register: Issuance of Nationwide Permits; Notice (67 FR 2020-2095) and the February 13, 2002, Federal Register: Issuance of Nationwide Permits; Notice; Correction (67 FR 6692-2295), which authorizes:

23. Approved Categorical Exclusions. Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where that agency or department has determined, pursuant to the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (40 CFR part 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (ATTN: CECW-OR) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Before approval for purposes of this NWP of any agency's categorical exclusions, the Chief of Engineers will solicit public comment. In addressing these comments, the Chief of Engineers may require certain conditions for authorization of an agency's categorical exclusions under this NWP. (Sections 10 and 404)

REGIONAL CONDITION A

The following geographic areas and waters of the U.S. are excluded from coverage by the indicated NWPs. However, these NWPs may be used in these areas when informal (e.g., telephone) coordination with Federal and State agencies (i.e., EPA, FWS, NMFS, ADEC, ADFG, ADGC and ADNR) and the affected coastal district(s) confirms that there is no opposition to use of the NWP(s) for the proposed project. If no such consensus can be reached or if the Corps is unable to contact all of the above referenced agencies then the NWP cannot be used.

1. The Municipality of Anchorage (NWPs 3¹, 6, 12², 14, 18, 19, 23, 27, 29, 31, 33, 39, 40, 41, 42, 43, and 44).
2. Areas within and designated as "high value" wetlands in the Homer Wetlands Study Report: Final version [February 1989] (NWPs 3¹, 12², 14, 18, 19, 23, 27, 29, 31, 39, 41, 42, 43, and 44).
3. Areas designated as "A" or "B" wetlands in the Juneau Wetlands Management Plan. (NWPs 3¹, 12², 14, 18, 19, 23, 27, 29, 31, 39, 40, 41, 42, 43, and 44).
4. Areas under Corps of Engineers jurisdiction that lie within the plan boundaries of the Kenai River Comprehensive Management Plan [KRCMP] (NWPs 3¹, 12², 14, 18, 19, 23, 27, 29, 31, 39, 40, 41, 42, 43, and 44).
5. The Matanuska-Susitna Borough (NWP 12²).
6. Areas in the Northwest Arctic Borough designated as one of the following: Designated Important Resource Areas and Sensitive Use Areas in the district Coastal Management Program. (NWPs 3¹, 12², 13, 14, 18, 19, 23, 27, 29, 31, 39, 40, 41, 42, 43, and 44).
7. Designated Areas Meriting Special Attention (AMSA) identified in Coastal Zone Management Plans (NWPs 3¹, 12², 14, 18, 19, 23, 27, 29, 31, 39, 40, 41, 42, 43, and 44).
8. Waters documented as supporting anadromous fish, and other jurisdictional areas within 100 feet (measured from Ordinary High Water) of such waters (NWPs 3¹, 12², 13, 14, 18, 19, 27, 29, 31, 39, 40, 41, 42, 43, and 44). Note: For projects under NWP 12 and 14 this exclusion does not apply to perpendicular crossings.
9. Areas which support eelgrass beds (6, 12, 14, 15, 18, 19, 23, and 35).
10. Waters that are listed on Alaska's current Clean Water Act Section 303(d) List of Impaired Water bodies and other jurisdictional areas within 100 feet (measured from Ordinary High Water) of such waters (12, 13, 14, 18, 19, 29, 39). List of impaired water bodies located at <http://www.state.ak.us/local/akpages/ENV.CONSERV/dwaq/tmdl/98onepage.htm>

REGIONAL CONDITION B

In fresh or marine waters, no pentachlorophenol preservatives may be used on wooden structures. In fresh waters, no creosote may be used on wooden structures. In fresh and marine waters, any

preservative on wooden structures must be applied by pressure injection using a method that prevents leaching (such as those approved by the Western Wood Preserves Institute).

REGIONAL CONDITION C

Prospective permittees must notify the District Engineer in accordance with the "notification" requirements described in General Condition 13 for the following NWP:

All activities authorized by NWPs 6*, 7, 17, 19, 21, 23**, 27, 29, 31, 32, 33, 34, 35, 36, 37, 38, and 44; and,
Projects which exceed the thresholds or are of the type specified in the NWP language, 3, 5, 12, 13**, 14, 18, 39, 40, 41, 42, and 43.

In addition to the Federal agencies and State Historic Preservation Office, the Corps District Office shall send this PCN to Alaska Division of Governmental C or, if the proposed project is located outside the coastal zone, to the appropriate state agencies, including the Departments of Environmental Conservation, Fish and Game, and Natural Resources.

*NWP 6 - no PCN required for simple borings.

**NWP 13 - A PCN is required for all projects (independent of thresholds) located in anadromous and resident fish streams.

***NWP 23 - The PCN requirement may be waived provided the project proponent provides documentation that coordination (equivalent to General Condition 13, Notification requirements) with all appropriate State and Federal resource agencies was conducted within one year of submittal of an application to the Corps of Engineers for the same project (no increase in scope) at the same location. In addition, a written response (e.g., letter, E-mail, phone memo initialed off by agency representative) from the State and Federal resource agencies must also be submitted to the Corps along with an explanation as to how resource agency comments were addressed and project plans were affected.

Note: NWPs 1, 2, 4, 8, 9, 10, 11, 15, 16, 20, 22, 24, 25, 28, and 30 do not require a PCN for any activity.

REGIONAL CONDITION D

Project limits of authorized sites shall be clearly identified in the field (e.g., staking, flagging, silt fencing, use of buoys, existing footprint for maintenance activities, etc.) prior to clearing and construction to ensure avoidance of impacts to waters of the U.S. (including wetlands) beyond project footprints.

REGIONAL CONDITION E

A plan employing the techniques listed below shall be implemented to avoid or minimize disturbance to wetlands, stream banks, riparian areas and beach fringes and/or to re-establish vegetation in such areas when disturbance cannot be avoided. Areas disturbed during project construction must be revegetated as soon as possible, preferably in the same growing season as the disturbance. Erosion protection shall be provided and remain in place until the soil is permanently stabilized. Any sedimentation of the above areas or adjacent water bodies caused by a project authorized by a NWP shall be considered a violation of the NWP.

Avoidance and minimization techniques may vary with site conditions and include, but are not limited to, the following:

- Planning construction access and scheduling work to avoid or minimize damage to wetland vegetation.
- Operating equipment in bog or emergent wetlands on frozen ground to minimize destruction of the natural vegetative mat.
- Using crane matting or suitable geotextile material to protect vegetation from damage by heavy equipment.

Revegetation techniques may vary with site conditions and include, but are not limited to the following:

- Seeding, planting, replacement of reserved ground cover, and/or fertilizing of re-contoured ground to promote re-establishment of natural plant communities. Species to be used for seeding and planting should follow this order of preference: 1) species native to the site; 2) species native to the area; 3) species native to the state; and, 4) non-native species. Note: If native species are not available,

only non-native species which are known to not reproduce in the general project area, may be used for revegetation. The following species are known to be highly invasive and may not be used under any circumstances for revegetation under these NWP: Alopecurus arundinacea (meadow foxtail), A. pratensis (creeping foxtail), Lythrum salicaria (purple loosestrife), Melilotus alba (white sweet clover), M. officinalis (yellow sweet clover), Phalaris arundinacea (reed canary grass), Phleum pratense (timothy), and Polygonum cuspidatum (known by the common names: Japanese knotweed, crimson beauty, Mexican bamboo, and Japanese fleece flower) Lysimachia terrestris (swamp loosestrife/yellow loosestrife) Phragmites australis (common reed).

-In peat wetlands, systematically removing the natural vegetative mat (with root masses intact) prior to construction, storing it in a manner to retain viability (usually frozen or hydrated), then replacing it after re-contouring the ground following construction, with final contours within one foot of adjacent undisturbed soil surfaces after one growing season and one freeze/thaw cycle. For minor utility projects where no imported bedding or backfill material is used (e.g., "plowed in" cables or small utility lines installed with ditch-witches), simple restoration to pre-work contours and appropriate revegetation (see above) shall suffice.

Restoration and revegetation of streambank and shoreline habitat should utilize the most up-to-date bioengineering techniques and use of biodegradable materials when feasible and practicable (i.e., Streambank Revegetation and Protection: A Guide for Alaska (Muhlberg and Moore 1998)). Techniques may include, but are not limited to, brush layering, brush mattresses, live siltation, and use of jute matting and coir logs to stabilize soil and re-establish native vegetation.

REGIONAL CONDITION I

For utility lines in peat soils, specific measures must be included in the project description to ensure that excavation will not disrupt the integrity of the subject wetland hydrology. Such measures might include horizontal ditch/trench blocks or vertical backfill blocks to address and minimize out migration of groundwater, either as subsurface drainage from adjacent wetlands or to prevent utility line bedding from acting as a conduit channel for groundwater.

REGIONAL CONDITION L

All persons proposing activities on State lands or in State waters must present proof of application to the manager of the land where the proposed project is located. This objective may be met by submitting a fully completed Alaska Coastal Project Questionnaire for the proposed activity.

REGIONAL CONDITION M

All persons proposing activities, which require Fish Habitat permits, in fish-bearing waters must present proof of application for a Fish Habitat Permit from the ADFG. Fish-bearing waters include habitat for both anadromous and resident fish and shall be identified by reference to the latest or the most recent *Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes*, or other documentation provided to the Alaska District during the PCN.

REGIONAL CONDITION N

NWP activities must assure that suspended sediment and turbidity do not affect waters beyond the immediate work area. Silt fences, silt curtains, or other diversion or containment structures shall be installed* to contain sediment and turbidity at the work site (a) parallel to and within 10 feet of the toe of any fill, or soil exposed within 25 feet of a standing or flowing waterbody, if the fill site has a downslope or surface connection to the waterbody; and, (b) adjacent to any fill placed or soil exposed within a standing or flowing waterbody. All silt fences, curtains, and other structures must be installed properly and maintained in a functioning manner for the life of the construction period where fill material and exposed soils might cause transport of sediment or turbidity beyond the immediate construction site.

*If the Alaska District Corps determines that a sediment or turbidity control measure is not necessary, or must deviate from the above specifications, then the Corps shall describe the changes in the preconstruction notification.

REGIONAL CONDITION O

Mitigation required by special condition must be completed before or concurrent with project construction, if practicable. Where project mitigation involves the use of a mitigation bank or fee-in-lieu, payment must be made to the bank or fee-in-lieu program before commencing construction of the permitted activity, if practicable. (Fee amount will be determined at time of payment).

NATIONWIDE PERMIT GENERAL CONDITIONS

- 1. Navigation.** No activity may cause more than a minimal adverse effect on navigation.
- 2. Proper Maintenance.** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
- 3. Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the U.S. during periods of low-flow or no-flow.
- 4. Aquatic Life Movements.** No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
- 5. Equipment.** Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
- 6. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the State or tribe in its Section 401 water quality certification and Coastal Zone Management Act consistency determination.
- 7. Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
- 8. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
- 9. Water Quality.** (a) In certain states and tribal lands an individual 401 Water Quality Certification must be obtained or waived (See 33 CFR 330.4(c)).
(b) For NWP's 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the state or tribal 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality (refer to General Condition 21 for stormwater management requirements). Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters, including streams (refer to General Condition 19 for vegetated buffer requirements for the NWP's).

This condition is only applicable to projects that have the potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring.

10. Coastal Zone Management. In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see 33 CFR 330.4(d)).

11. Endangered Species. (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the USFWS or NMFS the District Engineer may add species-specific regional endangered species conditions to the NWPs.

(b) Authorization of an activity by a NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal “takes” of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their World Wide web pages at <http://www.fws.gov/r9endspp/endspp.html> and <http://www.nfms.noaa.gov1protresloverviewles.html> respectively.

12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. Notification. This general condition requires the applicant to provide notification (except for NWPs # 1, 2, 4, 8-11, 15, 16, 20, 22, 24, 25, 28, 30, and 34) to the District Engineer, including project-specific information, before DA authorization can be granted. The District Engineer reviews that information and solicits input from federal, state, and local resource agencies before making a permit decision. Once authorization has been granted, there are no further requirements of this general condition; therefore, the text of this condition has been removed. A copy of the full text will be provided upon request (visit our web site at: www.poa.usace.army.mil/reg).

14. Compliance Certification. Every permittee who has received NWP verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include: (a) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions; (b) A statement that any required mitigation was completed in accordance with the permit conditions; and (c) The signature of the permittee certifying the completion of the work and mitigation.

15. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the U.S. authorized by the NWPs does

not exceed the acreage limit of the NWP with the highest specified acreage limit (e.g., if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the U.S. for the total project cannot exceed 1/3-acre).

16. Water Supply Intakes. No activity, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. Shellfish Beds. No activity, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. Suitable Material. No activity, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

19. Mitigation. The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

(a) The project must be designed and constructed to avoid and minimize adverse effects to waters of the U.S. to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland impacts requiring a PCN, unless the District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

(d) Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example, 1/4-acre of wetlands cannot be created to change a 3/4-acre loss of wetlands to a 1/2-acre loss associated with NWP 39 verification. However, 1/2-acre of created wetlands can be used to reduce the impacts of a 1/2-acre loss of wetlands to the minimum impact level in order to meet the minimal impact requirement associated with NWPs.

(e) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineer may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland impacts.

(g) Compensatory mitigation proposals submitted with the "notification" may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the U.S.

(h) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

20. Spawning Areas. Activities, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow.

This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restricting its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the U.S., or discharges of dredged or fill material.

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Except as noted below, discharges of dredged or fill material into waters of the U.S. are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the U.S. may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the USFWS or the NMFS has concurred in a determination of compliance with this condition.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

26. Fills Within 100-Year Floodplains. For purposes of this General Condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

(a) Discharges in Floodplain; Below Headwaters. Discharges of dredged or fill material into waters of the U.S. within the mapped 100-year floodplain, below headwaters (i.e., five cubic feet per second), resulting in permanent above-grade fills, are not authorized by NWP's 39, 40, 42, 43, and 44.

(b) Discharges in Floodway; Above Headwaters. Discharges of dredged or fill material into waters of the U.S. within the FEMA or locally mapped floodway, resulting in permanent above-grade fills, are not authorized by NWP's 39, 40, 42, and 44.

(c) The permittee must comply with any applicable FEMA-approved state or local floodplain management requirements.

27. Construction Period. For activities that have not been verified by the Corps and the project was commenced or under contract to commence by the expiration date of the NWP (or modification or revocation date), the work must be completed within 12 months after such date (including any modification that affects the project).

For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps.

For projects that have been verified by the Corps, an extension of a Corps approved completion date may be requested. This request must be submitted at least one month before the previously approved completion date.

ADVISORY INFORMATION FOR ALL NATIONWIDE PERMIT ACTIVITIES

A Department of Fish and Game Permit is required for:

- ❖ Work in designated anadromous fish streams or other fish-bearing waters.
- ❖ Placement of cross-channel structures, drainage structures, or diversions in streams that contain either anadromous or resident fish.
- ❖ Work in legislatively designated state game refuges, sanctuaries, or critical habitat areas.

A Department of Natural Resources Permit is required for:

- ❖ Any activity that is located on state land, state tide or submerged land, or shoreland.

A Kenai Peninsula Borough Permit is required for:

- ❖ Projects occurring within the 50 foot Habitat Protection Area established by Kenai Peninsula Borough Code, Section 21.18.040. No building, construction, filling, excavation, major clearing of vegetation, commercial recreation uses, or activity which results in significant erosion or damage to riparian habitat, or results or increases ground or water pollution can be conducted except when specifically allowed under KPB 21.18.070. Information and permit applications are available from the Kenai River Center at (907) 260-4882.

Department of Environmental Conservation Advisory:

- ❖ All activities authorized by NWP's must meet the Alaska Water Quality Standards (18 AAC 70). These standards establish strict limits on the amount of sediment and turbidity that may be introduced into fresh and marine waters, including wetlands. In concert with NWP General Condition #3, which requires appropriate soil erosion and sedimentation controls to be used and maintained in effective operating condition during construction, and requires all exposed soil and other fills to be permanently stabilized at the earliest practicable date, the policy of the Alaska Department of Environmental Conservation is as follows.

Silt and sediment from excavation and fill activities may not enter wetlands or waterbodies outside the project footprint. Where practicable, fill material must be free from fine material that is subject to erosion and suspension. Site preparation, excavation, fill placement, and construction activities must be conducted to prevent, minimize, and contain the erosion and suspension of fine material that could be carried off-site by surface runoff. If suspended material is evident in standing or flowing water outside the project footprint, appropriate control and containment measures must be applied. These measures may include slope stabilization, revegetation, filter fabric fences, straw bales, other effective filters or barriers, fiber matting, settling ponds, drainage control, trenches and water bars, waterproof covers over material piles and exposed soils, avoiding work during heavy precipitation, and other appropriate measures. Disturbed ground and exposed soil not covered with fill, structures, or appurtenances must be stabilized and revegetated in an appropriate and timely manner to minimize erosion and sedimentation, so that a durable vegetative cover is established and maintained.

Matanuska-Susitna Coastal District Advisory:

- ❖ Within the 75-foot shoreline setback, all areas not occupied by allowed development must minimize disturbance of natural vegetation.

Federal Emergency Management Act (FEMA) Advisory:

- ❖ Many areas of the state are covered by FEMA approved floodplain regulations, local land-use plans and regulations, and other ordinances and regulations related to development. These restrictions must be adhered to in the development of a residence on a fill permitted by a NWP.